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ABSTRACT

The opening question in this document is: Have you ever been confronted with sex discrimination? If you can answer yes to any of 42 more specific questions on discriminatory acts, you have a bona fide complaint. From this point the document serves as a guide on what evidence is needed in a complaint, where the complaint is to be filed, and sources of assistance that can be obtained in filing a complaint. The Civil Rights Act of 1964, Title VII, Equal Pay Act, Office of Federal Contract Compliance, and the Massachusetts Anti-Distribution Laws are discussed in detail. (BP)

ED 094178

SEX DISCRIMINATION IN EMPLOYMENT

.what to know about it

.what to do about it

Equal Economic Opportunity Task Force

Eastern Massachusetts Chapter

National Organization for Women

First Edition: March 1972
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HAVE YOU BEEN CONFRONTED WITH SEX DISCRIMINATION?

While looking for a job

Was the job advertised under a help-wanted column titled "male" or"female"?

Did the ad state or imply that a member of one sex was wanted for the position?

Were there different application forms for men and for women?

Did the employment agency personnel office refer you to stereotyped "female" jobs if you were not seeking that type of job?

If a test was administered, was it related to the type of position you were seeking?

Were you misled by euphemistic job titles such as "administrative assistant"?

Were you misled by a job description, purported to be management entry level when in fact it was clerical in nature?

Did the employer maintain more rigid, higher qualifications for women than for men applicants?

During a job interview

Did the interviewer ask you questions which would not ordinarily be asked of a man seeking a similar job?

Did the interviewer inquire about your children, marital status, marriage plans, plant to have children, birth control practises?

Did the interviewer state or imply that a woman would not be considered for that type of job?

Did the interviewer state or imply any stereotyped myths about women employees, such as "they never stick with

a job", "they are too emotional", "they can't get along with the men in a businesslike fashion?"

Did the interviewer infer there was something peculiar about your sexuality because you were pursuing "male" job goals?

When negotiating a position

Did the employer offer you a lower salary than was advertised?

Are other positions still unfilled more commensurate with your education and experience?

Has the position been"downgraded" since the initial interview through changes in the number of employees to be supervised, changes in the person to whom you would report?

Did the employer change the specifications of the job after you interviewed for the job, and thereby placed you in a non-competitive position, in order to justify hiring a man?

Did they fail to hire you

Because the job involved travel, or travel with members of the opposite sex?

Because of unusual working hours, lack of rest room facilities, or weight lifting requirements?

Because you are pregnant, have small children?

Because the job has always been held by a man, because the other employees indicated they would not work for a woman or with a woman?

Because a man applied who was almost as qualified?

Did the interviewer refuse to tell you why you were not hired when queried?

Did the interviewer suggest his company would hire you but the company's clients would never work with a woman, and therefore, the company's relations with its clients would be seriously jeopardized? Or that hiring you would create serious problems with unions, professional associations, etc.?

In your present job

Are there different seniority lines for men and women?

Do you receive less pay than a man doing similar work?

Are raise and promotion policies different for men and women?

Are training programs, educational leaves restricted to men?

Are fringe benefits different for men and women--different pension plans, life insurance plans, health insurance plans, dates of optional or mandatory retirement?

Are the employees' rules and regulations different for men and women?

Are there general patterns of discrimination in your place of employment, such as all female departments, all women in certain types of jobs, no women in others?

Are disabilities caused or contributed to by pregnancy, miscarriage, or abortion exempted from disability benefits?

Are benefits conditioned on whether or not the employee is the "head of household" or "principal wage earner"?

Have you been refused a promotion or salary raise on the basis that to do so would seriously jeopardize the company's financial structure?

Have you been offered compensatory time off instead of pay for time spent on the job over 40 hours a week, even when such overtime is obligatory?

Have you been given an exempt, managerial job without accompanying adequate authority or salary compensation?

If you are classified as "managerial", do you have reasonable access to company information, participate in the decision-making process, or aid in formulating departmental and/or company policy?

Are you expected by male colleagues to act out domestic roles such as serving coffee, acting as company hostess, performing clerical/secretarial jobs which were not specifically spelled out before you accepted the job?

If you hold a managerial position and refuse to perform non-managerial duties such as errand-running and typing for male colleagues are you classified as "uncooperative", "difficult","emotional", "disagreeable" to work with, "unprofessional", or suffering from biological problems such as menstrual cramps, menopause hysteria or sexual frustration?

Have you been refused a promotion, or lateral transfer, on the basis that you do such a splendid job in your present position tha t the company can't afford to move you?

Have you been given a fake managerial job title to satisfy the company's needs to provide government investigative agencies with satisfactory personnel records?

Are you forced to supervise and train men hired at higher salaries than you are presently receiving despite your job qualifications and seniority?

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, THEN YOU HAVE A BONA FIDE COMPLAINT. This list represents only some of the discriminatory acts you may encounter. If you believe that you have been discriminated against, you should file a complaint against your employer or prospective employer with the appropriate agency.

EXPECTING DISCRIMINATION?

Keep an accurate record of the source of the job lead. Keep the copy of the ad, the source of referral, etc.

Obtain the names and titles of everyone who interviews you or talks to you at the employer's office or employment agency.

If you are required to take any aptitude test, take the name of the test(s), the names of the administrators and scorers.

Keep copies of all correspondence with the employer. Keep copies of the letters you send as well as those you receive. Keep copies, if possible, of any application forms which you are required to use.

The investigating agency will want a complete history of your dealings with the employer so be sure to write down a complete account of relevant conversations immediately after they take place, and take down the names of any witnesses or any other persons who you may suspect were similarly treated.

WHERE TO FILE A COMPLAINT

Where you met discrimination	EEOC	Wages & Hours	OFCC*	MCAD
Union	X	X		X
Employment Agency	X			X
State or local gov't	X		X	X
State Employment Service	X		X	X
University	X	X	X	X
Public School	X	X		X
Private Employer				
With 6+ employeer				X
With 15+ employees	X			X
With 25+ employees	X	X		X
With Federal contracts	X	X	X	X
Hospital & Non-profit Institutions				
Professional	X	X	X	X
Non-professional	X	X	X	X
Federal Government		U.S. Civil Service Commission		

* OFCC has jurisdiction only over employers and agencies with Federal contracts of more than $10,000.

WHICH AGENCY?

If you experience discrimination and are eligible to file a complaint with both the EEOC and the MCAD, the following options are open:

1) File with the EEOC. By law, the EEOC must refer the case to the MCAD. After 60 days, if you are not satisfied with MCAD's progress on your case, you may request the EEOC to re-open the case.

2) File with the MCAD. If you are dissatisfied with their handling of the case, you may still file with the EEOC within 300 days of the occurrence of the alleged discrimination.

If you are eligible to file a complaint with both the EEOC and OFCC, and you file with OFCC, the complaint will be referred to the EEOC if it is an individual complaint. If it is class action, i.e.,if the complainant claims that the alleged discriminatory actions are directed toward all other employees of the same sex who are "similarly situated," it will be handled by OFCC.

If you are eligible to file with the Wage and Hours Division of the Department of Labor and any other agency, file with both agencies. WHD will investigate the case even if another agency is also investigating it. WHD can move more quickly than the other agencies and may pose more of a threat to an employer.

SOURCES OF ASSISTANCE

Assistance in filing a complaint can be obtained from the Equal Economic Opportunity Task Force of NOW. For referral to a task force member call 617-267-6160 or your nearest NOW chapter.

For the name of a private lawyer who handles sex discrimination cases, or other women's law cases, call the NOW Office, 617-267-6160 or your nearest NOW Chapter.

Most states, and some cities, have a human rights commission. Titles may differ. For information about your city and/or State Civil Rights Commission, contact the Office of the Governor, State Capitol Building, or the Office of the Mayor, City Hall.

The Civil Liberties Union of Massachusetts will take sex discrimination cases depending upon its case load, and also refers cases to private attorneys. For information, call 617-227-9469.

Free legal assistance is available to those whose incomes are below an established limit. The limits are roughly weekly take home pay of $88 for a family of two; $112 for a family of four; $135 for a family of six. Cambridge and Somerville Legal Services, 492-5520, covers Cambridge and Somerville residents. Boston Legal Assistance Project covers Boston residents, 742-8930. For information on other legal aid centers for your area, call either CSLS or BLAP for a referral, or call the NOW Office, 267-6160.

CIVIL RIGHTS ACT OF 1964, TITLE VII

Title VII of the Civil Rights Act of 1964 is administered by a five member commission appointed by and accountable to the President, the Equal Employment Opportunity Commission. It is funded through the House Ways and Means Committee. In addition to EEOC headquarters in Washington, there are regional and district offices through the country. Responsible for the New England area is:

Tel: 617-223-4535

Boston District Office
Equal Employment Opportunity Commission
100 Charles River Plaza, Suite 504
Boston, Ma. 02114

For information about your nearest regional office, write EEOC, Public Information Office, 1800 G Street, N.W., Washington, D.C. 20506.

Title VII prohibits:

1) An employer from failing or refusing to hire, discharging or otherwise discriminating against a person with respect to compensation, terms, conditions, or privileges of employment on the basis of sex. This includes failure to hire a woman because of marital status while men of the same marital status are hired; pension plans which will pay widows but not widowers; and health insurance plans which are available to men and women at different rates.

2) An employer from limiting, segregating, or classifying employees in such a way as to deprive any individual of employment opportunities or otherwise adversely affect the employee's status on the bais of sex. This includes separate seniority lists for men and women, "stereotyping" of jobs as for men or for women, and hours restrictions for women as prescribed in state protective laws.

3) Labor unions from excluding or expelling from membership, or otherwise discriminating against any individual on the basis of sex; from limiting, segregating, or classifying its membership, or classifying or failing or refusing to refer for employment any individual in any way that would deprive or tend to limit employment opportunities, or otherwise adversely affect the employee's status on the

basis of sex.

4) Employment agencies from failing to refer or refusing to refer for employment or otherwise discriminating against a person on the basis of sex, or from classifying or referring for employment any individual on the basis of sex. Job stereotyping by agencies is also prohibited.

5) Employers or organizations from printing or publishing advertisement indicating preference, limitation, specification, or discrimination on the basis of sex. This includes help wanted ads as well as recruiting literature which pictures only men or women performing a particular job, unless sex is a bona fide occupational qualification such as a matron in a prison, or a model, or an actor or actress.

6) Employers or organizations from discriminating against any individual because she/he has opposed an unlawful employment practise or has made a charge, testified, or participated in any investigation, proceeding, or hearing under Title VII. Harassment or dismissal is clearly prohibited.

7) Employers from discriminating in admission to, or employment in, apprenticeship or other training programs.

Eligibility of Complainant

Any individual who believes that she/he has been discriminated against on the basis of sex in an employment situation by any employer governed by Title VII may file a charge with the EEOC. The charge must be filed within 180 days from the date of the alleged violation. An individual who believes she/he has been discriminated against in violation of the provisions of Title VII may file charges on her/his own behalf or she/he may file anonymously through a representative, i.e. an attorney, NOW, NAACP. If the aggrieved individual believes that others of her/his same class are also being discriminated against, she/he should so indicate on the complaint. This makes the complaint a class action and may cause it to receive attention from EEOC faster than if it were an individual complaint. Note that the complainant must only believe that she/he has been discriminated against. It is the Commission's job to learn all the facts and draw a conclusion as to whether or not a violation occurred.

Jurisdiction of the Law

Title VII covers all employers and labor organizations engaged in industries affecting interstate commerce, employment agencies (including the Federal-State Training and Employment Service System) and agencies of state and local government including public schools. Title VII does not cover non-profit membership clubs, nor corporations wholly owned by the United States government.

Employees of the federal government are not covered by EEOC. However, the 1972 amendments to Title VII state that the federal government has the obligation to keep all personnel actions free from discrimination based on race, color, religion, sex or national origin. Enforcement is through the Civil Service Commission and an aggrieved individual is given the same right to file a civil action as a non-government employee.

Remedies

Remedies may include back pay, a change in benefits, changes in personnel regulations or other actions to benefit the complainant. Furthermore, the conciliation agreement may provide for periodic review of the employer's practices and policies.

Protection

Harassment or dismissal of the complainant by the employer is prohibited. Protection of the complainant's identity is not the usual practice. However, the 1972 amentments to Title VII allow a complaint to be brought on behalf of an aggrieved individual. This representative can be an attorney or other individual or organization. If the complaint is filed on behalf of an individual, the identity of the individual can be protected.

How to File a Charge

The charge of discrimination must be filed on an EEOC charge form which can be obtained from the District Office of the EEOC. The form requires the complainant's name and address, the name and address of the employer, labor organization, etc., the most recent date on which discrimination took place, and an explanation of the incident or practice. It is helpful to include copies of any relevant correspondence, advertisements, or company literature with the charge.

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. _____

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) (indicate) _____ Phone Number _____

Street Address _____

City _____ State _____ Zip Code _____

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☐

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name _____

Street address _____

City _____ State _____ Zip Code _____

AND (other parties if any) _____

4 Have you filed this charge with a state or local government agency? Yes ☐ When _____ (MONTH DAY YEAR) No ☐

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☐

6 The most recent date on which this discrimination took place: Month _____ Day _____ Year _____

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date _____ _____ (Sign your name)

Subscribed and sworn to before me this _____ day of _____ 196 _____

_____ (Name) _____ (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APP.: BUR. OF BUDGET—No. 124–R0001 FORM EEOC–5 (REV. 7–68)

Role of EEOC

In states with Fair Employment Practice laws (or which Massachusetts is one), the Commission must defer to the state agency and will forward the complaint to the MCAD. If, after 60 days the complainant is not satisfied with the state action, she/he may request that the EEOC investigate the case.

The Commission investigates the charge and if it finds probable cause of discrimination, it tries by conciliation to end the discrimination. The complainant may experience a lapse of six months to a year from the time the charge is filed with the EEOC until it is investigated. Once the Commission has investigated, another 8 months may pass before the investigating office issues its Findings of Fact. At this time the Charging Party and the Respondent (employer) may file objections to the EEOC's Findings of Fact. The Regional Director may either re-issue the Findings or attempt conciliation. If conciliation is unsuccessful, the entire case is sent to the Commission in Washington for evaluation. Again another long period of time will pass. If within 30 days after a charge is filed or within 30 days after any event in the investigation process, the Commission is unable to secure an acceptable conciliation agreement from the respondent, the Commission may bring a civil action against any respondent not a government, government agency or political subdivision named in the charge. (Actions against government organizations must be referred to the U.S. Attorney General.)

If conciliation is successful, a remedy for the discriminatory practice will be determined and agreed to by both parties. A conciliation agreement is not an admission of guilt on the part of the employer, but merely a promise to change an employment practice.

At any time after 180 days from the date of filing the charge, the complainant may request a "right to sue" letter and bring civil action against the respondent in Federal District Court. The court action must be brought within 90 days of the receipt of the "right to sue" letter. If the complainant choses to take his/her case to court, the EEOC may file an amicus brief and in many cases will find a lawyer to handle the case at no charge. The EEOC cannot serve as the complainant's lawyer unless the EEOC initiates the court action.

Sources of Information

Sex Discrimination Guidelines and amendments, published in the Federal Register, Nov. 22, 1965 (30 F.R. 14926); February 24, 1968 (33 F.R. 3344); August 19,1969 (34 F.R. 13367); and April 5, 1972 (37 F.R. 6835).

Civil Rights Act of 1964, 78 Stat. 265, 42 U.S.C. 2000e-12(b).

Guidelines on Employee Selection Procedures, Equal Employment Opportunity Commission, printed in the Federal Register, Aug. 1, 1970 (35 F.R. 12333).

Equal Employment Opportunity Act of 1972, 86 Stat. 103.

EQUAL PAY ACT

The Fair Labor Standards Act of 1938 as amended includes the 1963 Equal Pay Act, amended June 1972, which requires that employers pay equal pay for equal work. The Act is administered and enforced by the U.S. Department of Labor, Employment Standard Administration, Wage and Hour Division. Funds are appropriated by Congress and the Division is ultimately responsible to the Secretary of Labor.

The Boston area office covers the greater Boston area south to Brockton, west to Framingham, and north to New Hampshire. The office is located at:

Boston Area Office Tel: 617-223-6751
William L. Smith, Director
Department of Labor, Wage and Hour Division
38 Chauncy St.
Boston, MA.

For the location of and area covered by other area offices, contact:

New England Regional Office Tel: 617-223-5565
Walter P. Parker, Administrator
Department of Labor
JFK Building
Boston, MA

For information about other regional offices, write:
U.S. Department of Labor,
Wage and Hour Division
Washington, D.C. 20210

The Equal Pay Act prohibits:

Discrimination between employees on the basis of sex by paying wages to one sex at a rate less than that paid to employees of the opposite sex where the work performed requires equal skill, effort and responsibility. The jobs need not be identical to be considered substantially equal nor need they be in the same department. "Wages" includes all fringe benefits and all extra pay such as bonuses for efficiency or hazardous duty pay. The law does not apply to those cases in which pay differentials are based on a merit system, a

seniority system, or the amount or quality of production.

Eligibility of Complainant

The complainant must file a complaint or bring a suit within two years of the occurrence of the discrimination. However, if the discriminatory action is a willful violation of the law on the part of the employer, a complaint may be filed within three years.

Jurisdiction of Law

The law generally applies to all private employers, labor organizations, public institutions, schools and hospitals, including their executive, administrative, and professional personnel.

The law exempts federal and state governments and political subdivisions; seasonal amusements and recreational establishments and retail or service establishments with more than 50 percent of business in one state or with annual sales less than $250,000 (except laundry, dry cleaning, construction or building businesses, which are not exempt under any circumstances).

Remedies

The law provides that an employee experiencing sex discrimination need not file a complaint with the Department of Labor, buy may independently take the employer to court. In Massachusetts, the Federal District Court in Boston has jurisdiction. If found guilty of an unfair wage policy, the employer is liable for back pay equalling the difference between the wages paid the employee and the wages which should have been paid. In addition, the guilty employer must assume the cost of reasonable attorney's fees and the cost of the court action. Furthermore, if the court finds that the discriminatory policy was a willful violation of the law on the part of the employer, the employer is also liable for liquidated damages equalling the back pay owed or any portion thereof. In other words, anyone who successfully sues an employer in court will be awarded, at the least, back pay plus lawyer's fees and court costs, and at the most, double back pay plus lawyer's fees and court costs.

An employee who has experiences discrimination may file a complaint instead with the Department of Labor. However, as soon as the Department files a complaint in court to restrain the employer from discriminatory actions, the complainant loses the right to sue the employer independently. The Department of Labor may try to recover back pay for the employee by bringing the employer to court, but in this case only back pay (not an equal amount in liquidated damages) may be recovered.

In most cases, the Department of Labor will attempt to conciliate the complaint out of court and try to bring the employer into compliance with the law. If conciliation fails, the Department may request an injunction abainst the employer to stop the discriminatory practices. If the employer persists in or resumes these practices, then the Department can bring criminal action against the employer who would then be subject to a $10,000 fine or imprisonment or both.

When a complaint is filed with the Department of Labor, the complainant, if successful, might receive back pay or an increased wage. The employer may not reduce the wages of another employee to eliminate any pay discrepancies.

Protection

The Department of Labor will keep the complainant's name confidential and will obtain written consent before using her/his name or before taking the employer to court on her/his behalf. An employer may not dismiss an employee because she/he has filed a complaint or testified on behalf of a complainant.

Procedure

A complaint must be filed with the Area Office covering the area in which the discrimination was experienced. If the complainant does not know which area office is responsible, a complaint sent to the New England Regional Office will be sent to the proper area office.

The complaint should contain the name and address of the company union or other person who initiated or perpetuated the discriminatory practices; the date or dates when such practices occurred; a description of the practices, including comparative wages, a union contract where relevant, and a description of similar jobs.

Role of Agency

The area office will investigate the complaint. The office may subpoena books, records and witnesses and may hold a hearing. Furthermore, they may investigate the entire company, not just one office or division. If they find evidence of discrimination, they will initiate conciliation to bring the employer into compliance with the law. If conciliation is not reached or if an employer refuses to comply with the law, the Department may bring court action against the employer.

The Department of Labor may check up regularly on the employer. Furthermore, the Department need not have a complaint to initiate a complete investigation of an employer but may do so on its own initiative if, in its routine checks, it has reason to believe that an employer is violating the law.

Miscellaneous

If an employee experiences clear cut discrimination, wishes to regain back pay owed, does not fear revealing her/his identity, or has taken a new job or would otherwise not benefit by the old employer's future compliance with the law, then suing the employer independently in court is likely to bring the most benefits, although they may not be obtained any more quickly through the courts than through government agency procedures. However, filing with the Department of Labor is easier, involves fewer risks and brings about an investigation of the entire company.

Sources of Information

Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 201, et seq.) U.S. Department of Labor publication 1318.

OFFICE OF FEDERAL CONTRACT COMPLIANCE

Executive Order 11246 as amended by Executive Order 11375 sets forth non-discrimination requirements for federal contractors. It is administered and enforced by the Office of Federal Contract Compliance, U.S. Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20210, through twelve federal compliance agencies. The OFCC is funded by Congress and is ultimately responsible to the Secretary of Labor.

Prohibited Practices:

Executive Order 11246 as amended prohibits discrimination in "...employment (hiring), upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship."

The Sex Discrimination Guidelines give additional detail:

1) A distinction cannot be made between married and unmarried persons of one sex that is not made for persons of the opposite sex.

2) An employer cannot deny employment to women with young children unless it has the same exclusionary policy for men.

3) Mandatory and optional retirement ages must be the same for both sexes.

4) Employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" must either be the same for men and women or the resulting benefits must be equal.

5) Employers must grant maternity leave for a reasonable period of time. Upon the conclusion of such leave, the employee must be reinstated to her original job or to a job of like status and pay, with no loss of service credits. The medical decision of when she will leave and when she will return is normally a matter between the woman and her doctor.

6) State protective laws cannot be used to deny a woman employment in certain jobs.

7) Seniority lines based on sex are specifically prohibited.

8) The restriction of women to certain job classifications is specifically prohibited.

Who is covered

Executive Order 11246 as amended prohibits discrimination by any company holding a contract or subcontract of $10,000 or more with the Federal Government. The Order also covers federally assisted construction contracts and the states and their political subdivisions which are directly participating in the performance of a $10,000 or more Federal contract or subcontract.

If any location of a company has such a contract, all other locations are covered, including those of any parent organizations or subsidiaries. In practice, this means that the majority of companies in the U.S. fall under this order.

Eligibility of Complainant

A complaint can be filed by any employee of a Federal contractor, as defined above. This includes part-time and full-time; temporary and permanent employees as long as they are on the contractor's payroll and are not working for only a specified length of time or for the duration of a specific project (i.e. - Kelly Girls or consultants).

The employee herself can file a complaint or can do so through an authorized representative such as a lawyer, NOW, NAACP, etc. Individual complaints will normally be referred to EEOC. Class action complaints in which the complainant claims that she/he brings the suit on behalf of herself/himself and all other employees who are/were similarly situated, are investigated by OFCC. A former employee of a company can be part of a class action complaint, and under some circumstances, such as unjust termination, can file an individual complaint.

Affirmative Action Programs

Revised Order #4 requires that companies with a federal contract or subcontract of $50,000 or more and 50 or more employees take positive steps to eliminate sex (and racial) discrimination. Covered contractors must have an Affirmative Action Plan that must be revised and updated annually outlining the specific steps the company is taking and plans to take to assure that there are as many women and minorities in each job classification "as could be reasonably expected by their availability," This figure is determined by at least eight factors, which include the following: size of the female labor force and unemployment rates in relation to the total work force, statistics on women with appropriate educational backgrounds, who can be recruited in the immediate area, or in reasonable proximity, and the availability of training programs. Recruiting requirements include: picturing women in non-stereotyped roles in company literature, notifying recruiting sources that they will consider women equally for any position, and direct recruitment at women's colleges (if they recruit at men's colleges). A skills survey of female employees must be conducted and the results acted upon when openings occur in better jobs. Women must be included in lines of progression with significant upward mobility, and must be equitably represented in all training programs run by or sponsored by the company.

In theory, an employee can file a complaint if the company falls under this order and does not have or is not carrying out its Affirmative Action Plan. However, it is far better to file a complaint on the basis of the actual discriminatory practices that make such remedial action necessary, and add the company's lack of a required AAP (or elements of it) as evidence that they don't intend to do anything about it. Since a complaint normally requires full compliance review, the investigator will easily determine whether the company has an adequate plan.

Remedies

Remedies that would benefit the complainant might include changing promotion policies, increasing pay, or other corrective actions that would affect employees who had experienced discrimination. Back pay or a specific promotion or other incident which may have triggered the complaint would not generally be among the remedies.

Protection

There is no guarantee that the identity of the complainant will be concealed. However, the Order specifically states that all of the sanctions such as termination, suspension of contracts (see below) can be exercised against anh company which fails to take all necessary steps to protect a person from intimidation, threats, coercion, or discrimination, including firing for filing a complaint, furnishing information, or assisting or participating in any way with the complaint process. No woman should think that she has a complete protective shroud, however. There is often a discrepancy between theory and practice.

Revised Order #4 deals with harrassment after the settlement of a complaint by specifying that "it shall be the responsibility of supervisors to take actions to prevent harrassment of employees placed through affirmative action measures." Such harrassment before, during or after a complaint is grounds for the filing of another complaint, although if the case is still in progress, the facts would normally become another part of the case record.

How to File a Complaint

A complaint filed on an OFCC complaint form or a letter to the Director of OFCC or the appropriate compliance agency (see below) will initiate an investigation. A complaint letter must include: name, address and telephone number of the complainant; name and address of the Federal contractor or subcontractor committing the alleged violation; a description of the acts considered to be discriminatory.

A well-founded suspicion that women are being discriminated against plus a few observations, such as all but one woman are in low-paying clerical jobs, would constitute an adequate description of the discrimination for the purposes of having the company investigated. However, the more detail the better because this information will direct investigators to the right places.

OFCC will normally acknowledge receipt of a complaint. If insufficient information is supplied, OFCC will ask the complainant to submit additional information and allow the complainant 60 days to submit it.

Role of Agency

OFCC assigns the complaint to one of the twelve compliance agencies to investigate the complaint. Each agency is assigned a group of industries identified by their Standard Industrial Code number (SIC).

The compliance agency directs the complaint to its Regional Staff covering the area in which the company is located where it is assigned to a staff member for investigation. The investigator examines any company records which might be pertinent to the complaint such as payrolls, seniority lists, progression line charts, personnel files, etc. The investigator interviews the complainant and any other employees past or present whose testimony may be relevant in determining the facts of the case. Persons never employed by the company (particularly applicants) may also be interviewed.

The investigator draws up a summary of findings and case record containing copies of documents and interview notes. If the investigator finds grounds for the complaint, she/he first attempts informal resolution and appropriate corrective action of the matter with the company1 If an agreement is reached on satisfactory corrective action, the case is closed.

If the company refuses to take the corrective action, a formal hearing and review of findings is held by the compliance agency or the Director of OFCC. The outcome of this hearing is final. If the company agrees to take corrective action, it may within 10 days of agreeing still request a formal hearing and review. Again the results of this hearing are final.

If the investigator, with the concurrence of her/his agency, finds no cause for complaint, the case file is forwarded to the Director of OFCC. Unless the Director decides further investigation is needed, the case is closed as far as OFCC is concerned. There is no formal appeal procedure for the complainant; however, she/he may continue the case through either EEOC or the courts. Case file material can be made available to EEOC, but because of confidentiality requirements, not to a private lawyer.

A Federal employee may appeal an adverse decision to

SAMPLE LETTER FILING AN INDIVIDUAL COMPLAINT

Director
Office of Federal Contract Compliance
Department of Labor
Washington, D.C. 20210

Dear Madam/Sir:

Please consider this letter a formal complaint of sex discrimination under Executive Order 11246 as amended against the First National Supremacist Bank (give address). I have been the victim of sex discrimination on three counts: salary, promotional opportunity and termination.

I was hired as an assistant teller in January, 1968. Although performing the same duties as male tellers (with the exception of carrying heavy boxes of silver), I discovered that I was earning $50 a month less than a male teller who had been hired more recently than I. I have a B.A.; the male teller, only two years of college. When I asked for a raise on these grounds, I was informed that the male teller was only temporarily a teller as part of the management training program he was enrolled in, and that the salaries of management trainees are higher.

I then asked to be enrolled in the Management Training Program, but was told that it was not open to someone my age. I am 35. I shortly discovered that another male employee had joined the Management Trainee Program, after I had requested to join. He was 37. I again asked to be enrolled, but was told there were no openings. I said I thought I was being discriminated against because of my sex. A short time later, the bank terminated 3 tellers, and I was among them, even though the bank retained other tellers with less seniority than I had.

I contend that this is a clear case of sex discrimination. As a participant in the Federal Reserve System, the Bank is subject to the conditions of Executive Order 11246, which it has flagrantly violated. I demand that the bank reinstate me, enroll me in the Management Training Program, and grant me compensation through the payment of adjusted back wages retroactive to the date when I first applied for the Training Program.

Sincerely,

the Civil Service Commission; if she/he still obtains no reliev, she/he may then take her/his case to the Federal District Court in a civil action, naming the head of the department or agency as the defendant.

If the Company Refuses to Comply

The Order provides that "the Director (OFCC) or the agency (Compliance Agency) with the approval of the Director, may cause the cancellation, termination or suspension of any contract or subcontract; cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the Order" such as referral to the Justice Department for prosecution.

Almost all complaints are resolved long before they reach this point. The few cases which have gone to court (usually through joint OFCC/EEOC action) have involved fundamental principles with far reaching implications.

Miscellaneous

OFCC has strong sanctions which it may impose without court action. However, OFCC has no authority to go after back pay.

The time lapse from the filing of the complaint to the beginning of the investigation is usually at least six months. Complaints on companies monitored by the Department of Defense must go to Washington, but those on companies or institutions monitored by Health, Education, and Welfare can be dealt with directly at the regional office. For other compliance agencies' procedures, call the local compliance officer for advice.

Sources of Information

Executive Order 11246 published in the Federal Register Sept. 28, 1965 (30 F.R. 12319).

Executive Order 11375 amending Order 11246 published in the Federal Register Oct. 17, 1967 (32 F.R. 14303).

Revised Order #4 on Affirmative Action Programs published in the Federal Register Dec. 4, 1971 (36 F.R. 23152).

COMPLIANCE AGENCY ASSIGNMENTS

Standard Industrial Classification (SIC) codes are the key to the appropriate compliance agency. The SIC Directory gives the SIC codes for all classifications of employers. Dunn & Bradstreet lists the SIC code for each employer it catalogues by location. Hence, if two Raytheon plants have different codes, Dunn & Bradstreet will so specify. The following table summarizes the different compliance agencies responsible for different SIC code industries:

Compliance Agency	Industries and SIC Code	
Agency for International Development (AID) New State Bldg. Rm. 5758 Washington, D.C. 20523	89	Misc. and other services
Agriculture 408 Atlantic Avenue Boston, MA. 223-7758	01-02 07 20 21	Commercial and non-comm. farms Agricultural services Food and kindred products Tobacco Manufacturers
Atomic Energy Commission (AEC) Washington,D.C. 20545	281-282 285-289 32 38	Chemical, plastics, synthetics and paints Stone, clay and glass products Instruments and related products
Commerce (Maritime) JFK Building Boston, MA 223-2312	373 44	Ship and boat building and repair Water transportation
Defense 666 Summer St. Boston, MA 542-6000 x454	19 22 23 31 33 34 35 36 371 39 27	Ordnance and accessories Textile mill products Apparel & related products Leather products Primary metal Fabricated metal products Machinery (non-electrical) Electrical machinery Motor vehicles & equipment Miscellaneous manufacturing Printing & publishing

Compliance Agency	Industries and SIC Code	
	501	Motor vehicles & automotive equipment--wholesale
	503	Piece goods, notions, apparel, wholesale
	506	Electrical goods--wholesale
	507	Hardware, plumbing, heating equipment & supplies-wholesale
	508	Machinery, equipment and supplies--wholesale
	522	Plumbing, heating, air conditioning equipment--retail
	524	Electrical supply stores
	525	Hardware & farm equip.--retail
	551-552	Motor vehicle dealers
	559	Misc. aircraft, marine and automotive dealers
	56	apparel & accessory stores
General Services Admin. P.O. Building Atlantic Ave. Boston, MA 223-2700	08	Forestry
	24	lumber & wood products
	25	Furniture & fixtures
	26	Paper and allied products
	48	Communications
	49	Electrical, gas and sanitary services
	50-59	Wholesale and retail trade
	65	Real estate
	67	Holding & investment co.'s
	72	Personal services
	73	Misc. business services
	75	Automobile repair services
	78	Motion pictures
	79	Amusement & recreation serv.
Department of Health, Education and Welfare Civil Rights Division JFK Building Boston, MA 223-6397	63	Insurance
	64	Insurance agents
	66	Real estate, insur., loan, law offices
	80-82	Medical, legal, education services
	86	Non-profit organizations (includes colleges)
	84	Museums, art galleries

Compliance Agency	Industries and SIC Code	
Interior JFK Building Boston, MA 223-2973	09	Fisheries
	10-14	Mining & oil
	29	Petroleum, refining & related industries
	30	Rubber & plastic products
	46	Pipeline transportation
	70	Hotels & lodging places
National Aeronautical and Space Administration Federal Office Bldg., Rm. 101 Washington, D.C. 20546	372	Aircraft & parts
Post Office Post Office Dept. Room 3226 Washington, D.C. 20260	374	Railroad equipment
	375	Motorcycles, bicycles, parts
	379	Misc. transportation equip.
	40	Railroad transportation
	41	Local & inter-urban transit
	42	Motor, freight, transp. & storage
	47	Transportation services
Transportation Transportation Systems Center 55 Broadway Cambridge, MA 02142	373	Ship & boat building & repair
	44	Water transporataion
	45	Air transportation
Treasury JFK Building Boston, MA	60-62	Banking, credit & securities
Veterans Administration JFK Building Boston, MA 223-3000	283-284	Biologicals, pharmaceuticals

MASSACHUSETTS ANTI-DISCRIMINATION LAWS

Massachusetts General Laws, Chapter 151B

The act is enforced and administered by:
Massachusetts Commission Against Discrimination
120 Tremont Street
Boston, MA

Ms. Louise Eckert, Director
Division of Sex and Age Discrimination
Tel: 617-727-3990

The Act prohibits:

1) An employer from asking questions before employment, the answer to which would disclose the sex of the applicant; from circulating material or advertising for prospective employees in a manner which directly or indirectly implies or specifies a limitation on employment due to sex; from refusing to hire or discharging any individual because of sex; from discriminating against any individual in compensation, terms or conditions of employment (fringe benefits); from making distinctions between married and unmarried persons of one sex which is not made between married and unmarried persons of the other sex; from denying employment or employment benefits or advancement to members of one sex having children and requiring the employer to provide an 8 week maternity leave in most cases.

2) A labor organization from refusing to accept or excluding from membership or expelling any individual or discriminating against any individual because of sex; from prohibiting a member of one sex from seeking or holding office; from negotiating or working for the adoption of a contract which discriminates on the basis of sex; from using sex preference in hiring and referral practices, seniority systems, lay-offs and recalls.

3) An employment agency from asking questions whose answers would disclose the sex of the applicant; from advertising or publishing material to attract prospective applicants in a manner which directly or indirectly specifies or implies a limitation on employment due to sex; from making statements to prospective employees concerning applicants

which directly or indirectly disclose the sex of the applicant; from accepting or processing job orders which directly or indirectly imply or specify a limitation due to sex; from soliciting and interviewing job applicants on the basis of sex; and from dealing exclusively with one sex.

4) A retail credit agency from refusing credit on the basis of sex.

5) A person in the business of granting mortgage loans to refuse a mortgage or charge a higher interest rate on the basis of sex.

Bona fide occupational qualifications are narrowly construed, covering only those positions where authenticity or genuiness require one sex rather than the other and where public morals not merely social preferences demand.

Eligibility of Complainant

Any aggrieved person may file a complaint within six months of the date of the alleged discrimination. The Attorney General may also file a complaint, as may the MCAD itself. In actual practice, however, the MCAD rarely initiates an investigation unless motivated by a complaint and it is even more rare for the Attorney General to file a complaint with the MCAD.

Jurisdiction of Law

The Act applies to all private employers in Massachusetts with six employees or more, employment agencies, labor organizations, the Commonwealth and all its political sub-divisions, boards, departments and commissions.

Exempted are: non-profit, private social clubs, fraternal associations, and employers with less than six employees.

Remedies

Conciliation of the complaint and affirmative action to comply with the law is MCAD's major emphasis. The conciliation agreement may include an award of damages, back pay, etc. if the employer agrees to these remedies. If the case gets to court, the court may order the employer

to grant back pay or other damages. If the MCAD finds reasonable evidence of discrimination, it may request a temporary restraining order to stop the discrimination until the case is resolved.

If, after a hearing, the MCAD determines that discrimination does exist, the MCAD may order the employer to cease and desist from unlawful practices and/or to engage in affirmative action which may include hiring, upgrading, back pay, or other efforts.

Protection

The complainant may not be discharged, expelled or discriminated against because of filing a complaint or testifying in an investigation.

Procedure

A signed complaint in writing filed with the Commission stating the name and address of the employer, employment agency, or other person alleged to have discriminated, and a description of the nature of the discrimination is required. After the complaint is filed it will be assigned to one Commissioner who will, with staff, investigate the complaint. If no probable cause of discrimination is determined, the complaint will be dismissed, but the complainant may request a preliminary hearing before the rest of the Commission.

If probable cause is found from the investigation, the investigating Commissioner will arrange a conciliation conference with the complainant and the employer and may seek a temporary restraining order against the actions of the employer, to maintain the status quo, until the case is settles. The conciliation conference is conducted like an informal hearing with questions and answers from both sides. After the conference, the Commissioner will issue a proposed conciliation agreement which will be the basis for settling the complaint. The agreement may include back pay, upgrading, or other affirmative action. If an agreement is not reached which is satisfactory to all concerned, a full hearing before the rest of the Commission is ordered.

At the hearing, attorneys from the MCAD, the Attorney General's office, or private practice represent the case of

the complainant against the employer. From this point on the Commission is charging the employer with discrimination. However, the complainant may want to retain a private lawyer so that her/his case is presented most satisfactorily. If the Commission finds, at the close of the hearing, that the employer has engaged in unlawful practices, he will be ordered to cease and desist from these practices and to take affirmative action. The employer may also be required to report regularly on the manner in which he is complying with the order.

If either party is aggrieved by the order or finding of the MCAD, he/she can appeal for a court review to the county superior court where she/he lives or works within 30 days of the issuance of the Commission's orders. Also, the MCAD can obtain a court order for the enforcement of the order it issued, if it was not complied with.

Miscellaneous

It may be advisable for the complainant to engage a lawyer, particularly during the conciliation conference. Many cases are settled at this stage, so in order to present the case in a manner most advantageous to the complainant, a lawyer will be of great help. The employer will, in almost every case, have a lawyer.

The process of filing a case with the MCAD may be very lengthy, with a minimum of 6-8 months for the simplest case to several years for a complex case which entails a hearing by the Commission and court appeals.

Sources of Information

Guidelines and Regulations of the Massachusetts Commission Against Discrimination, December 17, 1971. Available from 120 Tremont Street, Boston, MA.

Compilation of the Laws Against Discrimination. Also available at 120 Tremont Street, Boston, MA.